PUBLIC PROSECUTOR v. KOO GEE LEONG & ORS.

[A.C.J. (Adams J.) July 17, 1961]

[Muar — Criminal Appeal No. 39 of 1961]

Penal Code, s.160 — Affray by fighting in public — Whether there must be disturbance of public peace for charge to be upheld — Position of person who is assaulted but who does not retaliate.

When there is a fight in a public place with blows struck, there is a disturbance of the peace and no further proof by the prosecution is necessary.

If a person is attacked by another in a public place and he makes no retaliation whatsoever, he cannot be guilty of fighting in public.

CRIMINAL APPEAL.

Hamzah bin Dato' Abu Samah (Deputy Public Prosecutor) for the appellant.

C. Paramjothy for the 1st respondent.

Miss Mary Lim for the 2nd–7th respondents.

Adams J.: This was an appeal by the Deputy Public Prosecutor against the acquittal by the learned Magistrate, Segamat, of 7 persons who were charged with an affray by fighting in public contrary to section 160 of the Penal Code.

The facts are that on the evening of the 20th September, 1960, at Jalan Omar, Pekan Jabi, Segamat there was a political meeting in connection with the recent Town Council elections. Apparently members of the rival party created a disturbance by driving motor cars and motor cycles past the area of the meeting sounding their horns violently. One of the prosecution witnesses got up on the platform and appealed to the rival party not to drive the vehicles and sound their horns noisily. The first defendant who was taking part in the meeting on his way home was attacked by the other six defendants. The six defendants who were from the rival party also attacked the second witness for the prosecution who managed to break loose and run away.

The Magistrate found that there had been a fight between two or more persons and that the fight was in a public place but refused to call on the defence because he said that there was no evidence that the fight must have disturbed the public peace. It was because of this finding that the learned Deputy Public Prosecutor appealed.

I think the learned Magistrate had misunderstood the commentary given in *Ratanlal* (19th Edition), pages 372 & 373. It says this:

'Disturb the public peace.' — It is essential that there must be a disturbance of the public peace. — The offence under this section postulates the commission of a definite assault or breach of the peace. Mere quarrelling in a street over money matters without exchange of blows is not sufficient.

This clearly postulates that once there has been a fight with blows struck, there has been disturbance of the peace and no further proof by the prosecution is necessary. This is also so in England.

Under the English Common Law an affray is a public offence to the terror of the Queen's subjects and all the prosecution has to prove is that the prisoners fought in a public street or highway. (See *Archbold*, 23rd Edn., p. 1308). *

The learned Magistrate was therefore wrong in holding that there was no case to answer in the case of defendants 2, 3, 4, 5, 6 and 7. He was however correct (but for the wrong reason) in holding that there was no case to answer in the case of Koo Gee Leong the 1st defendant because he was attacked by the other 6 defendants and in so far as the evidence of the prosecution goes he retaliated in no way whatsoever and therefore cannot be said to have been fighting.

The learned Deputy Public Prosecutor has said that he does not wish to take the matter any further. He merely wishes the Magistrate's erroneous conception of what had to be proved in a case of this nature be put right. Although, therefore, I would allow the appeal, I make no order thereon.

Appeal allowed.

Solicitors: *P. T. Wong & Co.; L. Rayner.*

* See now 24th Edn., p. 1343.

TAN CHWEE SENG v. REGINA

[A. Cr. J. (Rose C.J.) August 9, 1961]

[Singapore — Magistrate's Appeal No. 92 of 1961]

Secret Society — Accused having tattoo mark used by member of Secret Society — Accused to give acceptable explanation — No supporting evidence adduced to corroborate appellant's story — Societies Ordinance (Cap. 228), s.12.

Sentence — Whether maximum sentence justified.

The appellant was convicted of being a member of an unlawful secret society under section 12(1) of the Societies Ordinance. The Prosecutor produced expert evidence to show that the accused had on his right arm a tattoo mark which identified him as a member of the 24 Group Secret Society. The appellant stated that he was not a member of a secret society and that he had acquired the mark some ten years previously. He also produced his relatives to give evidence to the effect that he was not a member of the said secret society.

Held: it is for the accused to give an acceptable explanation as to why the tattoo mark is to be found upon his person and as in this case no supporting evidence was adduced to corroborate the appellant's statement that he received the tattoo mark some ten years ago and was always unaware of its significance, the conviction must stand.

Cases referred to:—

(1) *R.* v. *Lim Chin Shang*, [1957] M.L.J. 125.

(2) *Wong Thin* v. *Public Prosecutor*, [1958] M.L.J. 29.

MAGISTRATE'S APPEAL.

David Marshall for the appellant.

A. W. Ghows (Senior Crown Counsel) for the respondent.

Rose C.J.: The appellant was convicted in the First Criminal District Court of being a member of an unlawful society, to wit, the 24 group secret society, contra section 12(1) of the Societies Ordinance (Chapter 228).

The case for the prosecution was that there was tattooed upon the upper part of his right

arm the head of a Red Indian which, according to the evidence of the expert witness called on behalf of the Crown, is one of the modes of identification commonly used by members of the 24th Group Secret Society.

The appellant stated that he was not a member of any secret society; and that he had acquired the mark in question some ten years previously at the hands of a professional tattooist. In addition, he called as witnesses his mother, his brother, his sister and another male relative to testify that, so far as they knew, he was not a member of any secret society.

It was held in *Regina* v. *Lim Chin Shang* [1] that while a tattoo mark on a person's body, identifying him as a member of a secret society, does not constitute an "insignia" within the meaning of section 15 of the Societies Ordinance, nonetheless the presence of such a tattoo mark requires an explanation from the person accused.

That case was followed in *Wong Thin* v. *Public Prosecutor* [2] and in numerous unreported cases since.

No doubt, as learned counsel for the appellant contends, the acceptance by the Courts of such a position is, in a sense, a departure from accepted practice in criminal matters. It must, however, be borne in mind that the particular mischief in the State of Singapore which the provision in question is designed to control is in itself exceptional. It has been common knowledge, for many years past, not only that Singapore is the unwilling host of many secret societies but that a common method of identification between their members is the tattoo. Apart from proving the presence of such a mark it would in practice be difficult for the prosecution ever to establish that any particular person was, at any given time, a member of any particular secret society.

Thus is created a special situation which demands a special remedy. It is for this reason that the Courts, in practice, take — and for some time past have taken — the view that it is for an accused to give an acceptable explanation as to why the tattoo mark is to be found upon his person.

In the present matter the expert evidence was to the effect that a Red Indian head, the mark in question, was but one of a group of eleven marks, any one of which would identify the possessor as a member of the 24th group secret society.

The fact that there is more than one such identifying mark or that any particular identifying mark is not exclusively used as a society identification mark does not, in my opinion, affect the question as to whether or not a *prima facie* case has been established. Nor does the fact that the appellant had upon his body other tattoo marks of no significance. At the highest, these would seem to be matters which should properly be taken into consideration when assessing the validity of any explanation offered by an accused.

No doubt there are circumstances in which a Court should accept an explanation put forward by the defence to account for the possession of an incriminating tattoo mark. At this late date it would seem to be unnecessary for me to suggest instances, as each case must depend upon its particular circumstances. The practical question in the present case is whether the explanation afforded by the appellant should have been accepted by the learned District Judge. It is to be noted that, apart from the evidence of a group of his relatives who clearly are in no position to say more than that, so far as they are aware, he is not a member of any secret society, no supporting evidence was adduced to corroborate the appellant's statement that he received the tattoo mark some ten years ago and was always unaware of its significance.

Were one to accede to the proposition that an unsupported statement of innocence of this nature was to be regarded as an acceptable explanation, it would follow, in my opinion, that no practical purpose would be served by the practice which the Courts have for some time now adopted of regarding the mere existence of an incriminating tattoo mark as raising a *prima facie* case. For in every such case it would surely be reasonable to assume that an accused person would be prepared to deny knowledge of the implications of the mark.

In the case under consideration the learned District Judge declined to accept the appellant's explanation. For reasons that I have given I see no reason to differ from his conclusion. The conviction must therefore stand.

A point arises as to sentence. By section 10 of the Societies (Amendment) Ordinance, 1960 (No. 37 of 1960), the maximum term of imprisonment which may be imposed under section 12(1) of the principal Ordinance has been increased from six months to three years. The learned District Judge has thought fit to impose the maximum sentence of three years' imprisonment.

I am informed from the Bar that the present case is one of the earliest — if not the first — to be brought after the introduction of the amending Ordinance. Having regard to this and to the fact, referred to in the next paragraph, that there are no aggravating circumstances, it would seem that the present is not a case for the imposition of the maximum sentence permitted by law.

The accused has no previous convictions; he was not alleged by the prosecution to be a "fighter member" of the secret society in question; or in any other way specially prominent in its affairs.

In all these circumstances I consider that as regards this particular appellant — and at this point of time — justice will be done if the sentence is reduced to one of twelve months' imprisonment. And I so order.

Order accordingly.